IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5541 of 2005
Date of decision : 15.1.2007

Dharam Dev Batish & Anr.

.....Petitioner.

Versus

Gurnam Singh & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. Kanwaljit Singh,Advocate
for the petitioners.

Mr. Onkar Rai, Advocate
for respondent No. 4.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 1.9.2005 passed by the learned Civil Judge (Jr. Divn.), Dhuri vide which the application moved by Varinder Kumar son of Sh. Rajinder Pal has been accepted and he has been allowed to be impleaded as legal representative of Sh. Durga Dass deceased plaintiff. The application moved by Dharam Dev Batish and others, who are sons and daughter of late Sh. Durga Dass, has been dismissed.

It is not in dispute that in the application pending under Order 39 Rule 2-A C.P.C. arising out of the same suit, the petitioners herein have been ordered to be impleaded as one of the parties by observing that the Civil Court decree claimed by respondents was under challenge and, therefore, all the legal heirs of Durga Dass were entitled to be impleaded as party. Even in the impugned order the learned trial Court after observing that in a suit for permanent injunction the Court was not to decide about the

title of the plaintiff over the disputed property, has rejected the application merely on the ground that by way of Civil Court decree dated 9.12.1995 Sh. Varinder Kumar is the only person entitled to continue the present suit as legal representative of Sh. Durga Dass. This finding cannot be sustained as the Court below was only required to implead the legal representatives of Durga Dass who were to be brought on record to contest the case filed by Durga Dass in the year 2000 and, therefore, the decree of 1995 was not relevant for deciding the question. In any case once the decree in favour of Varinder Kumar was under challenge in a separate suit and in the present suit the question of title was not to be decided. The decree in the said suit, therefore, could not be the basis for rejection of the application moved by the petitioners. Accordingly, this revision is allowed. Respondent No.4 as well as the petitioners are allowed to be brought on record as legal representatives of Durga Dass.

15.1.2007. **(VINOD K. SHARMA)**
'sp' **JUDGE**